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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA,)	Case No.: 3:18-cv-01566
)	
Plaintiff,)	IN ADMIRALTY
vs.)	
)	VERIFIED COMPLAINT OF THE
CLAY JONAK, ROGER ISON, JONAK-)	UNITED STATES
ISON PARTNERSHIP, and UNKNOWN)	
DEFENDANTS 1-10,)	
)	
Defendants.)	
)	
)	
)	

Plaintiff, the United States of America, through its undersigned counsel, files this Complaint, and alleges upon information and belief as follows:

NATURE OF THE ACTION

1. This is an admiralty and maritime claim against defendants CLAY JONAK, ROGER ISON, JONAK-ISON PARTNERSHIP, and UNKNOWN DEFENDANTS 1-10, *in personam* (collectively “DEFENDANTS”), as hereinafter more fully appears, and within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

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2. The United States expressly reserves the right to amend this Complaint to include, *inter alia*, adding additional claims and additional parties.

JURISDICTION AND VENUE

3. The United States is authorized to bring this suit and the Court has jurisdiction pursuant to, *inter alia*, 28 U.S.C. § 1345, 33 U.S.C. § 2717, and 42 U.S.C. § 9613.

4. Venue is properly in this Court pursuant to, *inter alia*, 28 U.S.C. § 1391, 33 U.S.C. § 2717, and 42 U.S.C. § 9613.

5. The United States brings this action on behalf of the Oil Spill Liability Trust Fund (hereinafter, the “Fund”), pursuant to the Oil Pollution Act of 1990 (hereinafter, the “OPA”), 33 U.S.C. § 2701 *et seq.*, to recover any and all removal costs and damages incurred directly by the Fund, any removal costs and damages incurred by the Fund through compensation paid to any claimant, and all costs incurred by the Fund by reason of any such claims, including interest, prejudgment interest, adjudicative costs, and attorney’s fees.

6. Pursuant to the OPA, 33 U.S.C. § 2712(f), the United States has acquired by subrogation, or may in the future acquire by subrogation, the rights of any claimant or State paid compensation from the Fund. The United States specifically reserves the right to amend this Verified Complaint to assert any or all such subrogated rights and claims, pursuant to the OPA, 33 U.S.C. § 2712(f). Pursuant to the OPA, 33 U.S.C. § 2712(f)(2), and 28 U.S.C. § 2201, the United States also seeks a declaratory judgment on liability for response costs that will be binding on any subsequent action to recover further response costs that will be binding on any subsequent action to recover further response costs.

7. The United States also bring this action on behalf of the United States Environmental Protection Agency (hereinafter, the “EPA”) pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter, the “CERCLA”), as amended, 42 U.S.C. § 9607. The United States seeks to recover response costs which the EPA incurred in conducting removal actions as a result of releases and threatened releases of hazardous substances into the environment. Pursuant to Section 113(g)(2) of the CERCLA, 42 U.S.C. § 9613(g) and 28 U.S.C. § 2201, the United States also seeks a declaratory

judgment on liability for response costs that will be binding on any subsequent action to recover further response costs that will be binding on any subsequent action to recover further response costs.

PARTIES

8. At all times material herein, the vessels HV NEWELL, DREDGE MULTNOMAH, TUG EARNEST, BARGE D.B. AMAZON, M/V RIVER QUEEN, THE MANZANILLO, THE LEGO BARGE, THE 25, and THE PANCAKE BARGE (collectively, hereinafter referred to as the “VESSELS”) were vessels believed owned by CLAY JONAK, ROGER ISON, and JONAK-ISON PARTNERSHIP, and each of them, and operated by CLAY JONAK, ROGER ISON, and JONAK-ISON PARTNERSHIP, and each of them, and at all material times hereto were within the jurisdiction of this Court with respect to the matter alleged in this Complaint.

9. At all material times the VESSELS were “vessels” within the meaning of, *inter alia*, the OPA, 33 U.S.C. § 2701(37), and the CERCLA, 42 U.S.C. § 9601(28).

10. At all times material herein, defendant CLAY JONAK, based upon information and belief, presently is believed to have a residence and place of business in the State of Oregon, had a place of business and/or was doing business within this district and within the jurisdiction of this Court, including but not limited to, through, *inter alia*, the ownership and/or demise chartering and/or operation of the VESSELS, and each of them, at the time of, and with respect to, the matters sued upon herein.

11. At all times material herein, defendant CLAY JONAK, based upon information and belief, owned the VESSELS, and each of them.

12. At all times material herein, defendant CLAY JONAK, based upon information and belief, was owner *pro hac vice* of the VESSELS, and each of them.

13. At all times material herein, defendant CLAY JONAK, based upon information and belief, operated the VESSELS, and each of them.

14. At all times material herein, defendant CLAY JONAK, based upon information and belief, managed the VESSELS, and each of them.

1 15. At all times material herein, defendant CLAY JONAK, based upon information
2 and belief, demise chartered the VESSELS, and each of them.

3 16. At all times material herein, defendant CLAY JONAK, based upon information
4 and belief, controlled the VESSELS, and each of them.

5 17. At all material herein, defendant CLAY JONAK, based upon information and
6 belief, operated, managed, directed, controlled, and conducted operations having to do with the
7 discharge and/or disposal of oil and hazardous materials from the VESSELS, and each of them,
8 and operated, managed, directed, controlled, and conducted operations having to do with
9 compliance with environmental regulations concerning the VESSELS, and each of them.

10 18. At all times material herein, defendant ROGER ISON, based upon information
11 and belief, presently believed to have a residence and place of business in the State of Oregon,
12 had a place of business and/or was doing business within this district and within the jurisdiction
13 of this Court, including but not limited to, through, *inter alia*, the ownership and/or demise
14 chartering and/or operation of the VESSELS, and each of them, at the time of, and with respect
15 to, the matters sued upon herein.

16 19. At all times material herein, defendant ROGER ISON, based upon information
17 and belief, owned the VESSELS, and each of them.

18 20. At all times material herein, defendant ROGER ISON, based upon information
19 and belief, was owner *pro hac vice* of the VESSELS, and each of them.

20 21. At all times material herein, defendant ROGER ISON, based upon information
21 and belief, operated the VESSELS, and each of them.

22 22. At all times material herein, defendant ROGER ISON, based upon information
23 and belief, managed the VESSELS, and each of them.

24 23. At all times material herein, defendant ROGER ISON, based upon information
25 and belief, demise chartered the VESSELS, and each of them.

26 24. At all times material herein, defendant ROGER ISON, based upon information
27 and belief, controlled the VESSELS, and each of them.

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1 25. At all times material herein, defendant ROGER ISON, based upon information
2 and belief, operated, managed, directed, controlled, and conducted operations having to do with
3 the discharge and/or disposal of oil and hazardous materials from the VESSELS, and each of
4 them, and operated, managed, directed, controlled, and conducted operations having to do with
5 compliance with environmental regulations concerning the VESSELS, and each of them.

6 26. At all times material herein defendants CLAY JONAK and ROGER ISON
7 associated with each other to carry on as co-owners a business for profit with regard to the
8 VESSELS, including ownership, operation, management, and/or chartering of the VESSELS, and
9 each of them, and this association caused the creation of the JONAK-ISON PARTNERSHIP.

10 27. Since defendants CLAY JONAK and ROGER ISON were partners in the JONAK-
11 ISON PARTNERSHIP with regard to the VESSELS, including ownership, operation,
12 management, and/or demise chartering of the VESSELS, and each of them, they are each jointly
13 and severally liable for all obligations of the partnership.

14 28. At all times material herein, defendant JONAK-ISON PARTNERSHIP, based
15 upon information and belief, presently believed to have a residence and place of business in the
16 State of Oregon, had a place of business and/or was doing business within this district and within
17 the jurisdiction of this Court, including but not limited to, through, *inter alia*, the ownership and/or
18 demise chartering and/or operation of the VESSELS, and each of them, at the time of, and with
19 respect to, the matters sued upon herein

20 29. At all times material herein, defendant JONAK-ISON PARTNERSHIP, based
21 upon information and belief, owned the VESSELS, and each of them.

22 30. At all times material herein, defendant JONAK-ISON PARTNERSHIP, based
23 upon information and belief, was owner *pro hac vice* of the VESSELS, and each of them.

24 31. At all times material herein, defendant JONAK-ISON PARTNERSHIP, based
25 upon information and belief, operated the VESSELS, and each of them.

26 32. At all times material herein, defendant JONAK-ISON PARTNERSHIP, based
27 upon information and belief, managed the VESSELS, and each of them.

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1 33. At all times material herein, defendant JONAK-ISON PARTNERSHIP, based
2 upon information and belief, chartered the VESSELS, and each of them, by operation of law.

3 34. At all times material herein, defendant JONAK-ISON PARTNERSHIP, based
4 upon information and belief, controlled the VESSELS, and each of them.

5 35. At all times material herein, defendant JONAK-ISON PARTNERSHIP, based
6 upon information and belief, operated, managed, directed, controlled, and conducted operations
7 having to do with the discharge and/or disposal of oil and hazardous materials from the
8 VESSELS, and each of them, and operated, managed, directed, controlled, and conducted
9 operations having to do with compliance with environmental regulations concerning the
10 VESSELS, and each of them.

11 36. At all times material herein, and by reason of the matters alleged in this Complaint,
12 defendant CLAY JONAK is a “responsible party” within the meaning of the OPA, 33 U.S.C. §
13 2701 *et seq.*

14 37. At all times material herein, and by reason of the matters alleged in this Complaint,
15 defendant ROGER ISON is a “responsible party” within the meaning of the OPA, 33 U.S.C. §
16 2701 *et seq.*

17 38. At all times material herein, and by reason of the matters alleged in this Complaint,
18 defendant JONAK-ISON PARTNERSHIP is a “responsible party” within the meaning of the
19 OPA, 33 U.S.C. § 2701 *et seq.*

20 39. At all times material herein, defendant CLAY JONAK was within the scope of
21 entities specified in the CERCLA, 42 U.S.C. § 9607(a), with respect to hazardous substances and
22 the matters alleged in this Complaint.

23 40. At all times material herein, defendant ROGER ISON was within the scope of
24 entities specified in the CERCLA, 42 U.S.C. § 9607(a), with respect to hazardous substances and
25 the matters alleged in this Complaint.

26 41. At all times material herein, defendant JONAK-ISON PARTNERSHIP was within
27 the scope of entities specified in the CERCLA, 42 U.S.C. § 9607(a), with respect to hazardous
28 substances and the matters alleged in this Complaint.

42. At all times material herein, defendants CLAY JONAK, ROGER ISON, and JONAK-ISON PARTNERSHIP, as well as other persons or entities whose identities are not yet known, were at all material times, and pursuant to information or belief, acting as agents and/or alter egos of each other with respect to the matters alleged in this Complaint and are therefore responsible and liable, jointly and severally, for all of each of the others' obligations, acts, omissions, and strict liability with respect to the matters alleged in this Complaint and action.

43. This Complaint herein does not presently assert claims for natural resource damages. The United States expressly reserves the right to amend this Complaint to add such claims for natural resource damages.

44. The United States expressly reserves the right to amend this Complaint to, *inter alia*, add additional parties and assert additional claims against such additional parties and the present DEFENDANTS herein.

GENERAL ALLEGATIONS

45. In July 2013, defendants CLAY JONAK and ROGER ISON entered into a lease for 3.98 acres of submerged lands in the Columbia River and within navigable waters of the United States at or near Goble, Oregon (hereinafter "GOBLE MOORAGE"), and moored various vessels, including the VESSELS, at this location.

46. At all relevant times, the VESSELS were moored in the Columbia River and within navigable waters of the United States.

47. By 2015, the GOBLE MOORAGE contained a collection of approximately twenty-eight vessels, including the HV NEWELL, DREDGE MULTNOMAH, TUG EARNEST, BARGE D.B. AMAZON, M/V RIVER QUEEN, THE MANZANILLO, THE LEGO BARGE, THE 25, and THE PANCAKE BARGE, all located in the Columbia River and within navigable waters of the United States, as aforesaid.

48. DEFENDANTS obtained a policy or policies of insurance that provided coverage for the discharges of oil and hazardous substances alleged in this lawsuit, including United Specialty Insurance Company's Facility Exposures Environmental Liability Policy No. 4110653. United Specialty Insurance Company has filed a Declaratory Action in this Court seeking a

judgment that “it owes no duty to defend or indemnify Defendants [CLAY JONAK and ROGER ISON] against the Claim and any related litigation or administrative proceedings under the Policy.” (*United Specialty Insurance Company, Plaintiff-Appellee, v. Clay Jonak and Roger Ison, Defendants, and State of Oregon, Intervenor-Appellant*, case no. 3:17-cv-00330-AC, Docket No. 1, at 40.) The United States expressly denies that United Specialty Insurance Company is not obligated under said policy and/or policies of insurance to pay for the liabilities that are the subject of this Complaint and action.

49. The State of Oregon has appealed the foregoing case to the Ninth Circuit Court of Appeals, and on November 29, 2017, the District Court issued an Order staying that action pending resolution of the appeal. United States reserves any and all rights pertaining to the foregoing policy and/or policies of insurance, including, but not limited to, the right to intervene in that lawsuit once the case has returned to the jurisdiction of the District Court.

HV NEWELL (FPN S15032)

50. At all relevant times, vessel HV NEWELL contained oil, as such term is defined under the OPA, 33 U.S.C. § 2701 *et seq.*

51. On or about September 26, 2015, defendant CLAY JONAK contacted the United States Coast Guard and reported that the HV NEWELL was sinking while moored in the Columbia River, and was discharging oil.

52. When United States Coast Guard personnel arrived on-scene on September 26, 2015, they observed the HV NEWELL partially submerged, an oil sheen on the water surrounding the HV NEWELL, and a constant stream of oil discharging from cracks in the HV NEWELL’s hull. DEFENDANTS deployed a containment boom and placed absorbent pads inside the boom, but DEFENDANTS’ actions failed to successfully contain and clean-up the spill.

53. Once it had been determined that DEFENDANTS could not contain and clean-up the discharge, the United States Coast Guard, the Federal On-Scene Coordinator (hereinafter, “FOSC”), federalized the response, accessed the Fund, and issued a contract for pollution removal services.

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1 54. On or about September 26, 2015, Global Diving and Salvage, Inc., at the direction
2 of the FOSC, provided a dive team to assess the condition of the HV NEWELL as well as an
3 environmental response team to conduct containment and clean-up of the diesel oil. Global
4 removed an estimated 300 gallons of diesel fuel from tanks on HV NEWELL.

5 55. On or about September 27, 2015, pursuant to POLREP 1 AND FINAL, the
6 removal action was deemed completed.

7 56. The foregoing discharge of oil and continuing substantial threat of discharge,
8 including other acts and omissions to be established according to proof at trial, are hereafter
9 referred to as the “HV NEWELL Incident.”

10 57. The removal costs expended on and specifically attributed to the HV NEWELL
11 Incident were captured under the Federal Project Number: S15032.

12 58. The HV NEWELL Incident was proximately caused, *inter alia*, by the acts,
13 omissions, strict liability, and violations of federal construction and/or operating and/or safety
14 regulations by the HV NEWELL, its owners, crew, agents, servants, employees, and others for
15 whom DEFENDANTS were responsible, all within the privity and knowledge of
16 DEFENDANTS.

17 59. During the course of the removal action, the United States expended substantial
18 “removal costs” and sustained “damages” within the meaning of the OPA, 33 U.S.C. § 2702(b).

19 60. The United States, by and through the FOSC, contracted with various entities,
20 including but not necessarily limited to, Global Diving and Salvage, Inc., to respond to the
21 discharge of oil from HV NEWELL. The United States paid these entities for the removal costs
22 incurred in responding to the discharge and the substantial threat of discharge of oil and, pursuant
23 to the OPA, 33 U.S.C. § 2715, became subrogated to all claims, rights, and causes of action
24 thereto.

25 61. The NPFC demanded reimbursement for all the outstanding removal costs and
26 damages owed by the DEFENDANTS. Despite this demand, DEFENDANTS have failed and
27 refused to reimburse the costs and damages for which they are liable.

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62. As a result of the HV NEWELL Incident and as a result of failure by DEFENDANTS to pay the full costs resulting from the Incident, in excess of \$18,292.33 remains as an unpaid balance from monies due and owing to the United States, plus such other additional amounts to be established according to proof at trial.

DREDGE MULTNOMAH (FPN S16012)

63. At all relevant times, the vessel DREDGE MULTNOMAH contained oil, as such term is defined under the OPA, 33 U.S.C. § 2701 *et seq.*

64. On May 19, 2015, State of Oregon and United States Coast Guard Officials inspected the DREDGE MULTNOMAH and, based on this inspection, the United States Coast Guard Captain of the Port (“COTP”) issued an Administrative Order No. 2015-IMD01 determining, *inter alia*, that the DREDGE MULTNOMAH constituted a substantial threat of discharge of oil into the navigable waters of the United States, and required DREDGE MULTNOMAH’s owner to make an inventory of the oil on board and thereafter remove and dispose of such oil. Defendant CLAY JONAK signed an Acknowledgment of Receipt of this Administrative Order on or about July 6, 2015.

65. DEFENDANTS failed to remove or dispose of oil from DREDGE MULTNOMAH.

66. After the DEFENDANTS failed to respond, immediately or otherwise, to the substantial threat of discharge of oil into the navigable waters of the United States, the United States commenced a removal action in this matter.

67. During the course of the removal action, the United States expended substantial “removal costs” and sustained “damages” within the meaning of the OPA, 33 U.S.C. § 2702(b).

68. The United States, by and through the FOSC, contracted with various entities, including but not necessarily limited to, NRC Environmental Services, to respond to the discharge of oil from DREDGE MULTNOMAH. The United States paid these entities for the removal costs incurred in responding to the discharge of oil and, pursuant to the OPA, 33 U.S.C. § 2715, became subrogated to all claims, rights, and causes of action thereto.

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69. On or about January 27, 2016, at the direction of the FOSC, NRC Environmental Services investigated the potential for oil discharge and hazardous substance release from DREDGE MULTNOMAH. Upon entering the DREDGE MULTNOMAH, it was determined that oil in several tanks posed an imminent substantial threat to the environment.

70. On May 2, 2016, Federalized clean up and removal operations on DREDGE MULTNOMAH began. NRC equipment mobilization was brought to the GOBLE MOORAGE and set up. Heating coils were inserted into the aft storage tank on board the MULTNOMAH and heating operations continued throughout the evening.

71. On May 3, 2016, pumping of the aft tank began with an estimated 3,800 gallons of Heavy Bunker C Oil removed from DREDGE MULTNOMAH. Upon completion of the aft tank, contractors moved into the tank heating equipment to the port side storage tank and heating operations began and continued throughout the evening. The first load of product was taken to the Waste Management Hillsboro Site for disposal.

72. On May 4, 2016, pumping of the port side storage tank began with an estimated 1,200 gallons of Heavy Bunker C Oil removed from DREDGE MULTNOMAH. Contractors continued throughout the day and successfully worked the heating elements over the installed tank baffles to facilitate the heating and removal of more oil product. Heating operations continued throughout the evening.

73. On May 5, 2016, pumping of the port side storage tank continued with an estimated 1,325 gallons of Heavy Bunker C Oil removed from DREDGE MULTNOMAH and thereafter taken to the Waste Management Hillsboro Site for disposal. On or about May 6, 2016, pursuant to POLREP 2 AND FINAL, the removal action was deemed completed.

74. The foregoing substantial threat of discharge of oil, including other acts and omissions to be established according to proof at trial, are hereafter referred to as the "DREDGE MULTNOMAH Incident No. 1."

75. The removal costs expended on and specifically attributed to the DREDGE MULTNOMAH Incident No. 1 were captured under the Federal Project Number S16012.

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1 76. The DREDGE MULTNOMAH Incident No.1 was proximately caused, *inter alia*,
 2 by the acts, omissions, strict liability, and violations of federal construction and/or operating
 3 and/or safety regulations by the DREDGE MULTNOMAH, its owners, crew, agents, servants,
 4 employees, and others for whom DEFENDANTS were responsible, all within the privity and
 5 knowledge of DEFENDANTS.

6 77. The NPFC demanded reimbursement for all the outstanding removal costs and
 7 damages owed by the DEFENDANTS. Despite this demand, DEFENDANTS have failed and
 8 refused to reimburse the costs and damages for which they are liable.

9 78. As a result of the DREDGE MULTNOMAH Incident No. 1 and as a result of
 10 failure by DEFENDANTS to pay the full costs resulting from the Incident, in excess of
 11 \$179,671.88 remains as an unpaid balance from monies due and owing to the United States, plus
 12 such other amounts to be established according to proof at trial.

13 **TUG EARNEST (FPN S16041)**

14 79. At all relevant times, vessel TUG EARNEST contained oil, as such term is defined
 15 under the OPA, 33 U.S.C. § 2701 et seq.

16 80. On September 25, 2016, defendant CLAY JONAK reported to the United States
 17 Coast Guard that the TUG EARNEST had sunk at its moorings, that the vessel had residual diesel
 18 fuel onboard, and that the vessel was discharging oil into the Columbia River.

19 81. On September 25, 2016, the United States Coast Guard determined that the TUG
 20 EARNEST discharged oil and constituted a continuing substantial threat of discharge of oil into
 21 the navigable waters of the United States, and the FOSC issued a Notice of Federal Assumption
 22 for an Oil Pollution Incident. CLAY JONAK signed an Acknowledgment of said Notice of
 23 Federal Assumption.

24 82. The United States, by and through the FOSC, contracted with various entities,
 25 including but not necessarily limited to, NRC Environmental Services, Ballard Marine
 26 Construction, and Global Diving and Salvage, Inc. to respond to the discharge of oil from TUG
 27 EARNEST. The United States paid these entities for the removal costs incurred in responding to

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1 the discharge of oil and, pursuant to the OPA, 33 U.S.C. § 2715, became subrogated to all claims,
2 rights, and causes of action thereto.

3 83. Between September 26, 2016 and October 5, 2016, oil clean-up and oil removal
4 operations were conducted on the TUG EARNEST, during which time an estimated 330 gallons
5 of oil was removed from the TUG EARNEST.

6 84. On or about October 5, 2016, pursuant to POLREP 3 AND FINAL, the removal
7 action on TUG EARNEST was deemed completed.

8 85. The foregoing discharge and substantial threat of discharge of oil, including other
9 acts and omissions to be established according to proof at trial, are hereafter referred to as the
10 “TUG EARNEST Incident.”

11 86. The removal costs expended on and specifically attributed to the TUG EARNEST
12 Incident were captured under the Federal Project Number S16041.

13 87. The TUG EARNEST Incident was proximately caused, *inter alia*, by the acts,
14 omissions, strict liability, and violations of federal construction and/or operating and/or safety
15 regulations by the TUG EARNEST, its owners, crew, agents, servants, employees, and others for
16 whom DEFENDANTS were responsible, all within the privity and knowledge of
17 DEFENDANTS.

18 88. During the course of the removal action, the United States expended substantial
19 “removal costs” and sustained “damages” within the meaning of the OPA, 33 U.S.C. § 2702(b).

20 89. The NPFC demanded reimbursement for all the outstanding removal costs and
21 damages owed by the DEFENDANTS. Despite this demand, DEFENDANTS have failed and
22 refused to reimburse the costs and damages for which they are liable.

23 90. As a result of the TUG EARNEST Incident and as a result of failure by
24 DEFENDANTS to pay the full costs resulting from the Incident, in excess of \$33,017.92 remains
25 as an unpaid balance from monies due and owing to the United States, plus such other amounts
26 to be established according to proof at trial.

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GOBLE MOORAGE ASSESSMENT (FPN S17019)

91. At all relevant times, vessel DREDGE MULTNOMAH, BARGE D.B AMAZON, M/V RIVER QUEEN, THE MANZANILLO, THE LEGO BARGE, THE 25, and THE PANCAKE BARGE contained oil, as such term is defined under the OPA, 33 U.S.C. § 2701 *et seq.*

92. At all relevant times, vessel DREDGE MULTNOMAH, BARGE D.B AMAZON, and M/V RIVER QUEEN contained hazardous substances, as such term is defined in the CERCLA, 42 U.S.C. § 9601 *et seq.*, and implementing regulations.

93. At all relevant times, the said VESSELS had previously discharged and/or were continuing to discharge oil and hazardous substances into navigable waters of the United States and/or posed substantial threats of discharge of oil and hazardous substances into the navigable waters of the United States.

94. On March 17, 2017, a settlement was reached between State of Oregon and defendants CLAY JONAK and ROGER ISON, which agreement required CLAY JONAK and ROGER ISON, and each of them, to vacate the GOBLE MOORAGE by June 1, 2017.

95. On or about March 28, 2017, the FOSC issued Administrative Orders No. 2017-IMD01 and 2017-IMD02, directing CLAY JONAK and ROGER ISON, to, *inter alia*, remove oil from the VESSELS and thereby prevent and mitigate the discharge and/or substantial threat of discharge of oil into navigable waters of the United States. The Order further stated, *inter alia*, “This Administrative Order becomes effective immediately upon receipt.” CLAY JONAK acknowledged receipt of said Administrative Orders on March 30, 2017. ROGER ISON acknowledged receipt of said Administrative Orders on April 26, 2017.

96. On or about April 28, 2017, the USCG Sector Columbia River IMD requested the CG Pacific Strike Team to assist in conducting an initial assessment of the GOBLE MOORAGE to identify oil and/or hazardous materials for removal from the VESSELS.

97. Beginning May 9, 2017 and continuing through May 31, 2017, the USCG Sector Columbia River IMD, CG Pacific Strike Team, OR Department of Environmental Quality, and NRC Environmental Services (NRC-E5) conducted a pollution site assessment of the VESSELS,

1 including the DREDGE MULTNOMAH, BARGE D.B AMAZON, M/V RIVER QUEEN, THE
2 MANZANILLO, THE LEGO BARGE, THE 25, and THE PANCAKE BARGE.

3 98. On or about June 1, 2017, the DEFENDANTS vacated the GOBLE MOORAGE.
4 However, DEFENDANTS failed to sufficiently remove or dispose of the oil and hazardous
5 substances from said VESSELS.

6 99. Specifically, a number of containers of oil and hazardous substances remained
7 onboard and within the compartments of the DREDGE MULTNOMAH, BARGE D.B
8 AMAZON, M/V RIVER QUEEN, THE MANZANILLO, THE LEGO BARGE, THE 25, and
9 THE PANCAKE BARGE.

10 100. In order to mitigate the foregoing substantial threat of discharge of oil and
11 hazardous substances, and in order to safely do so in a manner that would pose the least potential
12 risk to life, property, and the environment, the decision was made to remove the oil and/or
13 hazardous substances from the VESSELS.

14 101. On or about June 1, 2017, the FOSC issued a Notice of Federal Assumption to
15 DEFENDANTS, determining that these remaining containers of oil and hazardous substances
16 onboard the DREDGE MULTNOMAH, BARGE D.B AMAZON, M/V RIVER QUEEN, THE
17 MANZANILLO, THE LEGO BARGE, THE 25, and THE PANCAKE BARGE continued to
18 pose a threat of discharge or release of oil and hazardous substances, that DEFENDANTS' actions
19 to mitigate said discharge or release was unsatisfactory, and that effective June 1, 2017, the United
20 States Coast Guard would assume total response activities for the discharge of oil and hazardous
21 substances and the substantial threat of continuing discharge of oil and hazardous substances from
22 the vessels at the GOBLE MOORAGE.

23 102. The United States, by and through the FOSC, contracted with various entities to
24 respond to the discharge of oil from these VESSELS. The United States paid these entities for
25 the removal costs incurred in responding to the substantial threat of discharge of oil and, pursuant
26 to the OPA, 33 U.S.C. § 2715, became subrogated to all claims, rights, and causes of action
27 thereto.

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1 103. Between June 1, 2017 and July 7, 2017, under the direction of the FOSC,
2 contractors performed oil pollution removal operations, which included but was not limited to
3 conducting a site assessment, procuring supplies, and mobilizing necessary heavy equipment and
4 personnel for oil and hazardous waste removal on board the VESSELS.

5 104. The foregoing discharge and substantial threat of discharge of oil, including other
6 acts and omissions to be established according to proof at trial, are hereafter referred to as the
7 “GOBLE VESSEL ASSESSMENT”.

8 105. The removal costs incurred during the GOBLE VESSEL ASSESSMENT (which
9 included costs for contractors’ work barges and crane equipment; purchases of miscellaneous
10 supplies that could not be attributed to a single vessel, but was used for the GOBLE VESSEL
11 MOORAGE as a whole; and Pacific Strike Team personnel costs) were captured under Federal
12 Project Number S17019.

13 106. On or about August 31, 2017, pursuant to CORRECTED POLREP 3 AND
14 FINAL, the removal action was deemed completed for the GOBLE VESSEL ASSESSMENT.

15 107. The GOBLE VESSEL ASSESSMENT was proximately caused, *inter alia*, by the
16 acts, omissions, strict liability, and violations of federal construction and/or operating and/or
17 safety regulations by the VESSELS, their owners, crew, agents, servants, employees, and others
18 for whom DEFENDANTS were responsible, all within the privity and knowledge of
19 DEFENDANTS.

20 108. During the course of the removal action, the United States expended substantial
21 “removal costs” and sustained “damages” within the meaning of the OPA, 33 U.S.C. § 2702(b).

22 109. During the course of the removal action, the United States expended substantial
23 “removal and remedial costs” and sustained “damages” within the meaning of, *inter alia*, the
24 CERCLA, 42 U.S.C. § 9601(6), 42 U.S.C § 9601(23)-(25), and 42 U.S.C. § 9607(a).

25 110. The NPFC demanded reimbursement for all the outstanding removal costs and
26 damages owed by the DEFENDANTS. Despite this demand, DEFENDANTS have failed and
27 refused to reimburse the costs and damages for which they are liable.

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111. As a result of the GOBLE VESSEL ASSESSMENT and as a result of failure by DEFENDANTS to pay the full costs resulting from the Incident, in excess of \$680,388.67 remains as an unpaid balance from monies due and owing to the United States, plus such other amounts to be established according to proof at trial.

DREDGE MULTNOMAH (FPN S17025)

112. At all relevant times, vessel DREDGE MULTNOMAH contained oil, as such term is defined under the OPA, 33 U.S.C. § 2701 et seq.

113. At all relevant times, vessel DREDGE MULTNOMAH contained hazardous substances, as such term is defined in the CERCLA, 42 U.S.C. § 9601 et seq., and implementing regulations.

114. On March 17, 2017, a settlement was reached between State of Oregon and defendants CLAY JONAK and ROGER ISON, which agreement required CLAY JONAK and ROGER ISON, and each of them, to vacate the GOBLE MOORAGE by June 1, 2017.

115. On or about March 28, 2017, the FOSC issued Administrative Orders No. 2017-IMD01 and 2017-IMD02, directing CLAY JONAK and ROGER ISON, to, *inter alia*, remove oil from the vessel and thereby prevent and mitigate the discharge and/or substantial threat of discharge of oil into navigable waters of the United States. The Order further stated, *inter alia*, “This Administrative Order becomes effective immediately upon receipt.” CLAY JONAK acknowledged receipt of said Administrative Orders on March 30, 2017. ROGER ISON acknowledged receipt of said Administrative Orders on April 26, 2017.

116. On or about March 28, 2017, the United States Coast Guard Captain of the Port issued a Captain of the Port Order No. 2017-026, determining the DREDGE MULTNOMAH constituted a substantial threat of discharge of oil and hazardous substances into the navigable waters of the United States, and directing, among other things, that DEFENDANTS comply with Administrative Orders Nos. 2017-IMD01 and 2017-IMD02. On March 30, 2017, CLAY JONAK signed an Acknowledgment of Receipt of this Captain of the Port Order.

117. The DEFENDANTS failed to respond, immediately or otherwise, to the discharge and substantial threat of discharge of oil into the navigable waters of the United States.

118. In order to mitigate the foregoing substantial threat of discharge of oil and hazardous substances, and in order to safely do so in a manner that would pose the least potential risk to life, property, and the environment, the decision was made to remove the oil and hazardous substances from the DREDGE MULTNOMAH.

119. The United States, by and through the FOSC, contracted with various entities, including but not limited to, Global Diving and Salvage, Inc., to respond to the discharge of oil from DREDGE MULTNOMAH. The United States paid these entities for the removal costs incurred in responding to the substantial threat of discharge of oil and, pursuant to the OPA, 33 U.S.C. § 2715, became subrogated to all claims, rights, and causes of action thereto.

120. On June 1, 2017, June 4, 2017, and June 7, 2017, oil and hazardous waste removal operations were performed on the DREDGE MULTNOMAH, during which time oil and hazardous substances, including PCBs, were removed from the DREDGE MULTNOMAH.

121. On or about June 7, 2017, pursuant to POLREP 1 AND FINAL, the removal action was deemed completed.

122. The foregoing substantial threat of discharge of oil and hazardous substances, including other acts and omissions to be established according to proof at trial, are hereafter referred to as the “DREDGE MULTNOMAH Incident No. 2.”

123. The removal costs expended on and specifically attributed to the DREDGE MULTNOMAH Incident No. 2 were captured under the Federal Project Number S17025.

124. The DREDGE MULTNOMAH Incident No. 2 was proximately caused, *inter alia*, by the acts, omissions, strict liability, and violations of federal construction and/or operating and/or safety regulations by the DREDGE MULTNOMAH, its owners, crew, agents, servants, employees, and others for whom DEFENDANTS were responsible, all within the privity and knowledge of DEFENDANTS.

125. During the course of the removal action, the United States expended substantial “removal costs” and sustained “damages” within the meaning of the OPA, 33 U.S.C. § 2702(b). During the course of the removal action, the United States expended substantial “removal and

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1 remedial costs” and sustained “damages” within the meaning of, *inter alia*, the CERCLA, 42
2 U.S.C. § 9601(6), 42 U.S.C § 9601(23)-(25), and 42 U.S.C. § 9607(a).

3 126. The NPFC demanded reimbursement for all the outstanding removal costs and
4 damages owed by the DEFENDANTS. Despite this demand, DEFENDANTS have failed and
5 refused to reimburse the costs and damages for which they are liable.

6 127. As a result of the DREDGE MULTNOMAH Incident No. 2 and as a result of
7 failure by DEFENDANTS to pay the full costs resulting from the Incident, in excess of
8 \$10,280.50 remains as an unpaid balance from monies due and owing to the United States, plus
9 such other additional amounts to be established according to proof at trial.

10 **BARGE D.B. AMAZON (FPN S17021)**

11 128. At all relevant times, BARGE D.B. AMAZON contained oil, as such term is
12 defined under the OPA, 33 U.S.C. § 2701 *et seq.*

13 129. At all relevant times, vessel BARGE D.B. AMAZON contained hazardous
14 substances, as such term is defined in the CERCLA, 42 U.S.C. § 9601 *et seq.*, and implementing
15 regulations.

16 130. On March 17, 2017, a settlement was reached between State of Oregon and
17 defendants CLAY JONAK and ROGER ISON, which agreement required CLAY JONAK and
18 ROGER ISON, and each of them, to vacate the GOBLE MOORAGE by June 1, 2017.

19 131. On or about March 28, 2017, the FOSC issued Administrative Orders No. 2017-
20 IMD01 and 2017-IMD02, directing CLAY JONAK and ROGER ISON, to, *inter alia*, remove oil
21 from the vessel and thereby prevent and mitigate the discharge and/or substantial threat of
22 discharge of oil into navigable waters of the United States. The Order further stated, *inter alia*,
23 “This Administrative Order becomes effective immediately upon receipt.” CLAY JONAK
24 acknowledged receipt of said Administrative Orders on March 30, 2017. ROGER ISON
25 acknowledged receipt of said Administrative Orders on April 26, 2017.

26 132. On March 28, 2017, the United States Coast Guard Captain of the Port issued a
27 Captain of the Port Order No. 2017-025, determining the BARGE D.B. AMAZON constituted a
28 substantial threat of discharge of oil and hazardous substances into the navigable waters of the

1 United States, and directing, among other things, that DEFENDANTS comply with
2 Administrative Orders Nos. 2017-IMD01 and 2017-IMD02. CLAY JONAK acknowledged
3 receipt of said Order on March 30, 2017. ROGER ISON acknowledged receipt of said Order on
4 April 26, 2017.

5 133. On May 11, 2017, the United States served ROGER ISON with a Notice of Federal
6 Assumption for an Oil Pollution Incident. ROGER ISON acknowledged receipt of said Notice.

7 134. After the DEFENDANTS failed to respond, immediately or otherwise, to the
8 substantial threat of discharge of oil into the navigable waters of the United States, the United
9 States commenced a removal action in this matter.

10 135. In order to mitigate the foregoing continued substantial threat of discharge of oil
11 and hazardous substances, and in order to safely do so in a manner that would pose the least
12 potential risk to life, property, and the environment, the decision was made to remove the oil and
13 hazardous substances from the BARGE D.B. AMAZON, and on May 11, 2017 and May 13, 2017,
14 an estimated 2,800 gallons was removed, including PCBs. From June 1 through June 7, 2017 an
15 additional estimated 26,800 gallons of oil, plus 8,000 gallons of oil and PCB mixtures were
16 removed from the BARGE D.B. AMAZON. On July 14, 2017, the last of the oil and oily mixtures
17 were disposed of.

18 136. On or about July 28, 2017, pursuant to CORRECTED POLREP 3 AND FINAL,
19 the removal action was deemed completed.

20 137. The United States, by and through the FOSC, contracted with various entities,
21 including but not necessarily limited to, NRC Environmental Services, to respond to the
22 substantial threat of discharge of oil and hazardous substances from BARGE D.B. AMAZON.
23 The United States paid these entities for the removal costs incurred in responding to the discharge
24 of oil and, pursuant to the OPA, 33 U.S.C. § 2715, became subrogated to all claims, rights, and
25 causes of action thereto.

26 138. During the course of the removal action, the United States expended substantial
27 “removal costs” and sustained “damages” within the meaning of the OPA, 33 U.S.C. § 2702b).

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1 139. During the course of the removal action, the United States expended substantial
2 “removal and remedial costs” and sustained “damages” within the meaning of, *inter alia*, the
3 CERCLA, 42 U.S.C. § 9601(6), 42 U.S.C § 9601(23)-(25), and 42 U.S.C. § 9607(a).

4 140. The foregoing substantial threats of discharge of oil and hazardous substances,
5 including other acts and omissions to be established according to proof at trial, are hereafter
6 referred to as the “BARGE D.B. AMAZON Incident.”

7 141. The removal costs expended on and specifically attributed to the BARGE D.B.
8 AMAZON Incident were captured under the Federal Project Number S17021.

9 142. The BARGE D.B. AMAZON Incident was proximately caused, *inter alia*, by the
10 acts, omissions, strict liability, and violations of federal construction and/or operating and/or
11 safety regulations by the BARGE D.B. AMAZON, its owners, crew, agents, servants, employees,
12 and others for whom DEFENDANTS were responsible, all within the privity and knowledge of
13 DEFENDANTS.

14 143. The NPFC demanded reimbursement for all the outstanding removal costs and
15 damages owed by the DEFENDANTS. Despite this demand, DEFENDANTS have failed and
16 refused to reimburse the costs and damages for which they are liable.

17 144. As a result of the BARGE D.B. AMAZON Incident and as a result of failure by
18 DEFENDANTS to pay the full costs resulting from the Incident, in excess of \$144,297.61 remains
19 as an unpaid balance from monies due and owing to the United States, plus such other additional
20 amounts to be established according to proof at trial.

21 **M/V RIVER QUEEN (FPN S17023)**

22 145. At all relevant times, M/V RIVER QUEEN contained oil, as such term is defined
23 under the OPA, 33 U.S.C. § 2701 *et seq.* At all relevant times, oil was stored on the M/V RIVER
24 QUEEN, as such term is defined by the OPA.

25 146. At all relevant times, vessel M/V RIVER QUEEN contained hazardous
26 substances, as such term is defined in the CERCLA, 42 U.S.C. § 9601 *et seq.*, and implementing
27 regulations.

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1 147. On March 17, 2017, a settlement was reached between State of Oregon and
2 defendants CLAY JONAK and ROGER ISON, which agreement required CLAY JONAK and
3 ROGER ISON, and each of them, to vacate the GOBLE MOORAGE by June 1, 2017.

4 148. On or about March 28, 2017, the FOSC issued Administrative Orders No. 2017-
5 IMD01 and 2017-IMD02, directing CLAY JONAK and ROGER ISON, to, *inter alia*, remove oil
6 from the vessel and thereby prevent and mitigate the discharge and/or substantial threat of
7 discharge of oil into navigable waters of the United States. The Order further stated, *inter alia*,
8 “This Administrative Order becomes effective immediately upon receipt.” CLAY JONAK
9 acknowledged receipt of said Administrative Orders on March 30, 2017. ROGER ISON
10 acknowledged receipt of said Administrative Orders on April 26, 2017.

11 149. On March 28 2017, the United States Coast Guard Captain of the Port issued a
12 Captain of the Port Order No. 2017-029, determining the M/V RIVER QUEEN constituted a
13 substantial threat of discharge of oil and hazardous substances into the navigable waters of the
14 United States, and directing, among other things, that DEFENDANTS comply with
15 Administrative Orders Nos. 2017-IMD01 and 2017-IMD02. CLAY JONAK acknowledged
16 receipt of said Order on March 30, 2017. ROGER ISON acknowledged receipt of said Order on
17 April 26, 2017.

18 150. DEFENDANTS failed to sufficiently remove or dispose of the oil and hazardous
19 substances from M/V RIVER QUEEN.

20 151. After the DEFENDANTS failed to respond, immediately or otherwise, to the
21 substantial threat of discharge of oil and hazardous substances into the navigable waters of the
22 United States; the United States commenced a removal action in this matter.

23 152. The United States, by and through the FOSC, contracted with various entities,
24 including but not necessarily limited to, NRC Environmental Services, to respond on more than
25 one occasion to substantial threats of discharge of oil and hazardous substances from M/V RIVER
26 QUEEN. The United States paid or will pay these entities for the removal costs incurred in
27 responding to the discharge of oil and, pursuant to the OPA, 33 U.S.C. § 2715, became subrogated
28 and will become further subrogated to all claims, rights, and causes of action thereto.

1 153. In order to mitigate the foregoing substantial threat of discharge of oil and
2 hazardous substances, and in order to safely do so in a manner that would pose the least potential
3 risk to life, property, and the environment, the decision was made to remove the oil and hazardous
4 substances from the M/V RIVER QUEEN, and on June 3, 2017, June 4, 2017, June 5, 2017, June
5 6, 2017, and June 7, 2017, oil and hazardous substance removal operations were conducted on
6 the M/V RIVER QUEEN, during which time, an estimated 925 gallons of oil and an estimated
7 70 gallons of oil with PCBs was removed from the M/V RIVER QUEEN.

8 154. On or about September 1, 2017, pursuant to POLREP 3, the initial removal action
9 was deemed completed. Since that time, additional oil and hazardous substances were required
10 to be removed from the vessel in order to prevent the continuing substantial threat of discharge
11 of oil and hazardous substances into the navigable waters of the United States from the M/V
12 RIVER QUEEN. Additional operations commenced in August 2018 and are ongoing.

13 155. The foregoing substantial threats of discharge of oil and hazardous substances,
14 subsequent removal of the oil and hazardous substances, including other acts and omissions to be
15 established according to proof at trial, and ongoing removal operations, are hereafter referred to
16 as the “M/V RIVER QUEEN Incident.”

17 156. The removal costs expended on and specifically attributed to the M/V RIVER
18 QUEEN Incident were captured under the Federal Project Number S17023.

19 157. The M/V RIVER QUEEN Incident was proximately caused, *inter alia*, by the acts,
20 omissions, strict liability, and violations of federal construction and/or operating and/or safety
21 regulations by the M/V RIVER QUEEN, its owners, crew, agents, servants, employees, and
22 others for whom DEFENDANTS were responsible, all within the privity and knowledge of
23 DEFENDANTS.

24 158. During the course of the removal action, the United States expended and will
25 continue to expend substantial “removal costs” and sustained “damages” within the meaning of
26 the OPA, 33 U.S.C. § 2702(b).

27 159. During the course of the removal action, the United States expended and will
28 continue to expend substantial “removal and remedial costs” and sustained “damages” within the

1 meaning of, *inter alia*, the CERCLA, 42 U.S.C. § 9601(6), 42 U.S.C § 9601(23)-(25), and 42
2 U.S.C. § 9607(a).

3 160. The NPFC demanded reimbursement for all the outstanding initial removal costs
4 and damages owed by the DEFENDANTS. Despite this demand, DEFENDANTS have failed
5 and refused to reimburse the costs and damages for which they are liable.

6 161. As a result of the M/V RIVER QUEEN Incident and as a result of failure by
7 DEFENDANTS to pay the full costs resulting from the Incident, in excess of \$86,471.91 remains
8 as an unpaid balance from monies initially due and owing to the United States, plus such other
9 additional amounts to be established according to proof at trial.

10 162. The United States is continuing to incur additional costs with respect to continuing
11 pollution removal and response actions pertaining to M/V/ RIVER QUEEN. The total amount of
12 such costs shall be established according to proof at trial.

13 **THE MANZANILLO, THE LEGO BARGE, THE 25, and THE PANCAKE**
14 **BARGE (FPN S17024)**

15 163. At all relevant times, THE MANZANILLO, THE LEGO BARGE, THE 25, and
16 THE PANCAKE BARGE each contained oil, as such term is defined under the OPA, 33 U.S.C.
17 § 2701 *et seq.*

18 164. On March 17, 2017, a settlement was reached between State of Oregon and
19 defendants CLAY JONAK and ROGER ISON, which agreement required CLAY JONAK and
20 ROGER ISON, and each of them, to vacate the GOBLE MOORAGE by June 1, 2017.

21 165. On or about March 28, 2017, the FOSC issued Administrative Orders No. 2017-
22 IMD01 and 2017-IMD02, directing CLAY JONAK and ROGER ISON, to, *inter alia*, remove oil
23 from the vessel and thereby prevent and mitigate the discharge and/or substantial threat of
24 discharge of oil into navigable waters of the United States. The Order further stated, *inter alia*,
25 “This Administrative Order becomes effective immediately upon receipt.” CLAY JONAK
26 acknowledged receipt of said Administrative Orders on March 30, 2017. ROGER ISON
27 acknowledged receipt of said Administrative Orders on April 26, 2017.

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1 166. On March 28 2017, the United States Coast Guard Captain of the Port issued a
2 Captain of the Port Order No. 2017-030, directing, among other things, that DEFENDANTS
3 comply with Administrative Orders Nos. 2017-IMD01 and 2017-IMD02. CLAY JONAK
4 acknowledged receipt of said Order on March 30, 2017. ROGER ISON acknowledged receipt of
5 said Order on April 26, 2017.

6 167. DEFENDANTS failed to sufficiently remove or dispose of the oil on THE
7 MANZANILLO, THE LEGO BARGE, THE 25, and THE PANCAKE BARGE.

8 168. The United States, by and through the FOSC, contracted with various entities,
9 including but not limited to, NRC Environmental Services, to respond to the substantial threat of
10 discharge of oil from THE MANZANILLO, THE LEGO BARGE, THE 25, and THE PANCAKE
11 BARGE. The United States paid these entities for the removal costs incurred in responding to the
12 discharge of oil and, pursuant to the OPA, 33 U.S.C. § 2715, became subrogated to all claims,
13 rights, and causes of action thereto.

14 169. In order to mitigate the foregoing substantial threat of discharge of oil, and in order
15 to safely do so in a manner that would pose the least potential risk to life, property, and the
16 environment, the decision was made to remove the oil from THE MANZANILLO, THE LEGO
17 BARGE, THE 25, and THE PANCAKE BARGE, and on June 1, 2017, June 4, 2017, June 5,
18 2017, and June 7, 2017, oil removal operations were conducted on THE MANZANILLO, THE
19 LEGO BARGE, THE 25, and THE PANCAKE BARGE, during which time, an estimated 600
20 gallons of fuel oil and an estimated 30 gallons of hydraulic oil were removed from bilges and
21 tanks on THE MANZANILLO, an estimated 200 gallons of oil were removed from THE LEGO
22 BARGE, an estimated 50 gallons of oil from miscellaneous oil containers on THE 25, and an
23 estimated 1100 gallons of oil were removed from THE PANCAKE BARGE.

24 170. On or about July 12, 2017, pursuant to CORRECTED POLREP 1 AND FINAL,
25 the removal action was deemed completed.

26 171. The foregoing substantial threat of discharge of oil and the subsequent removal of
27 the oil, including other acts and omissions to be established according to proof at trial, are
28 hereafter referred to as the “FPN S17024 Incident.”

1 172. The removal costs expended on and specifically attributed to the FPN S17024
2 Incident were captured under the Federal Project Number: S17024.

3 173. The FPN S17024 Incident was proximately caused, *inter alia*, by the acts,
4 omissions, strict liability, and violations of federal construction and/or operating and/or safety
5 regulations by THE MANZANILLO, THE LEGO BARGE, THE 25, and THE PANCAKE
6 BARGE, its owners, crew, agents, servants, employees, and others for whom DEFENDANTS
7 were responsible, all within the privity and knowledge of DEFENDANTS.

8 174. During the course of the removal action, the United States expended substantial
9 “removal costs” and sustained “damages” within the meaning of the OPA, 33 U.S.C. § 2702(b).

10 175. The NPFC demanded reimbursement for all the outstanding removal costs and
11 damages owed by the DEFENDANTS. Despite this demand, DEFENDANTS have failed and
12 refused to reimburse the costs and damages for which they are liable.

13 176. As a result of the FPN S17024 Incident and as a result of failure by
14 DEFENDANTS to pay the full costs resulting from the Incident, in excess of \$10,150.00 remains
15 as an unpaid balance from monies due and owing to the United States, plus such other additional
16 amounts to be established according to proof at trial.

17 **AND AS FOR A FIRST CAUSE OF ACTION**
18 **OIL POLLUTION ACT OF 1990**

19 177. Plaintiff, United States of America, refers to and incorporates by reference as
20 though fully set forth herein each and every foregoing paragraph of its complaint.

21 178. Pursuant to the OPA, 33 U.S.C. § 2701 *et seq.*, each responsible party for a vessel
22 from which oil is discharged, or which poses the substantial threat of discharge, into or upon the
23 navigable waters or adjoining shorelines or the exclusive economic zone of the United States, is
24 strictly liable for all costs, damages, and/or disbursements specified in the Act.

25 179. Pursuant to the OPA, and under the circumstances herein, all DEFENDANTS are
26 liable to the United States of America, without limitation, for all the aforesaid costs, damages,
27 and/or disbursements sustained by the United States as a result of each separate Incident.

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AND AS FOR A SECOND CAUSE OF ACTION
OIL POLLUTION ACT OF 1990

180. Plaintiff, United States of America, refers to and incorporates by reference as though fully set forth herein each and every foregoing paragraph of its complaint.

181. Pursuant to the OPA, the Fund shall be subrogated to all rights, claims, and causes of action of claimants to whom it has paid compensation.

182. As a result of the Incident, the Fund may incur costs, damages, and/or disbursements by reason of claims for removal costs and damages brought against it under the OPA.

183. Pursuant to the OPA, and under the circumstances herein, all DEFENDANTS, are liable to the United States of America, without limitation, for all such costs, damages, and/or disbursements which may be sustained by the Fund as a result of each separate incident.

184. The aforesaid unpaid removal costs, damages, and/or disbursements of the Fund, as provided in the OPA, are presently in excess of \$1,162,570.82.

AND AS FOR A THIRD CAUSE OF ACTION
OIL POLLUTION ACT OF 1990

185. Plaintiff, United States of America, refers to and incorporates by reference as though fully set forth herein each and every foregoing paragraph of its complaint.

186. Pursuant to the OPA, 33 U.S.C. § 2717(f)(2), the United States is entitled to, and hereby seeks, a declaratory judgment that is binding in any subsequent action or actions that DEFENDANTS are liable for removal costs and damages in any such subsequent action or actions pertaining to each separate Incident.

AS AND FOR A FOURTH CAUSE OF ACTION
(CERCLA, 42 U.S.C. § 9601 *et seq.*)

187. Plaintiff, United States of America, refers to and incorporates by reference as though fully set forth herein each and every foregoing paragraph of this Complaint.

188. Pursuant to the CERCLA, 42 U.S.C. § 9601 *et seq.*, including, but not limited to 42 U.S.C. § 9607, owners, operators, and other entities pertaining to vessels and facilities from

which hazardous substances are released, or which pose the substantial threat of release, into the environment and/or navigable waters of the United States, as defined at 42 U.S.C. § 9601(25) and authorized by Section 104 of the CERCLA, 42 U.S.C. § 9604, are strictly liable for all costs specified in the Act.

189. DEFENDANTS are liable to the United States by virtue of Section 107(a) of the CERCLA, 42 U.S.C. § 9607(a), for all response costs, remedial costs, and other costs incurred and to be incurred by the United States in connection with the Removal and Response Action pertaining to hazardous substances on and/or discharged from any of the above-listed vessels, including the DREDGE MULTNOMAH, BARGE D.B. AMAZON, and M/V RIVER QUEEN.

**AND AS FOR A FIFTH CAUSE OF ACTION
(CERCLA, 42 U.S.C. § 9613(g))**

190. Plaintiff, United States of America, refers to and incorporates by reference as though fully set forth herein each and every foregoing paragraph of its complaint.

191. Pursuant to Section 113(g)(2) of the CERCLA, 42 U.S.C. § 9613(g) and 28 U.S.C. § 2201, the United States also seeks a declaratory judgment on liability for response costs that will be binding on any subsequent action to recover further response costs.

**AND AS FOR A SIXTH CAUSE OF ACTION
VIOLATION OF FEDERAL DEBT COLLECTION PROCEDURES ACT
28 U.S.C. § 3001, et seq.**

192. Plaintiff, United States of America, refers to and incorporates by reference as though fully set forth herein each and every foregoing paragraph of its complaint.

193. Despite the liability, including strict liability, of DEFENDANTS to the United States, all as alleged in this Complaint, on information and belief, DEFENDANTS, in breach of law, including but not limited to, in violation of the provisions of the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 *et seq.*, have *inter alia*, instead of discharging debts owed to the United States, transferred, sold, spun off, and assigned assets so as to prejudice and cause irreparable harm to the United States.

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194. All such actions have caused damages, as will cause damages, to the United States in an amount to be established according to proof at trial

**AND AS FOR A SEVENTH CAUSE OF ACTION
PRIORITY OF GOVERNMENT CLAIMS
31 U.S.C. § 3713**

195. Plaintiff, United States of America, refers to and incorporates by reference as though fully set forth herein each and every foregoing paragraph of its complaint.

196. Despite the liability, including strict liability, of defendants to the United States, all as alleged in this Complaint, on information and belief, DEFENDANTS, in breach of law, have *inter alia*, instead of discharging debts owed to the United States, transferred, sold, spun off, and assigned assets so as to prejudice and cause irreparable harm to the United States.

197. All such actions have caused damages, as will cause damages, to the United States in an amount to be established according to proof at trial.

198. To the extent that DEFENDANTS, and/or their officers, servants, employees, representatives, agents, fiduciaries, or other individuals and entities acting on their behalf or with their authorization, have discharged claims or debts to any other person or entity other than the United States, or in the future discharge claims or debts to any person or entity other than the United States in contravention of, *inter alia*, 31 U.S.C. § 3713, DEFENDANTS, and/or their officers, servants, employees, representatives, agents, fiduciaries, or other individuals and entities acting on their behalf or with their authorization, are liable to the United States for the amount of any such payments.

199. With respect to any payments in contravention of 31 U.S.C. § 3713, and pursuant to 31 U.S.C. § 3713(b), any and all officers, servants, employees, representatives, agents, fiduciaries, or other individuals and entities making such payments are personally liable to the United States for the amount of such payments.

200. The United States shall amend this Complaint to add as defendants, in their individual capacity, any and all officers, servants, employees, representatives, agents, fiduciaries, or other individuals and entities who, in contravention of 31 U.S.C. § 3713(a) and (b), have

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1 already discharged, or in the future discharge, claims or debts to any person or entity other than
2 the United States.

3
4 WHEREFORE, the United States of America prays as follows:

- 5 1. That United States of America be granted judgment against defendants CLAY
6 JONAK, ROGER ISON, JONAK-ISON PARTNERSHIP, and UNKNOWN
7 DEFENDANTS 1-10, pursuant to the Verified Complaint of the United States
8 herein;
- 9 2. That the United States of America be granted declaratory judgment against
10 defendants CLAY JONAK, ROGER ISON, JONAK-ISON PARTNERSHIP, and
11 UNKNOWN DEFENDANTS 1-10 for pollution removal costs or damages
12 binding on any subsequent action or actions to recover further removal costs or
13 damages, plus interest, costs, disbursements, and attorneys' fees.
- 14 3. That the United States have constructive trusts as and against any and all assets of
15 defendants CLAY JONAK, ROGER ISON, JONAK-ISON PARTNERSHIP, and
16 UNKNOWN DEFENDANTS 1-10, said constructive trusts being available to
17 satisfy the amounts due and owing to the United States pursuant to the matters
18 alleged in this Complaint
- 19 4. For prejudgment and post judgment interest in an amount allowed by law;
- 20 5. That damages be awarded to the United States according to losses proved at trial;
- 21 6. Such other relief as the Court deems just and proper.

22 Dated: August 24, 2018.

Respectfully submitted,

23 BILLY J. WILLIAMS
24 United States Attorney
RENATA GOWIE, Chief, Civil Division

25 CHAD A. READLER
26 Acting Assistant Attorney General
27 R. MICHAEL UNDERHILL
28 Attorney in Charge, West Coast Office
U.S. Department of Justice, Civil Division,
Torts Branch, West Coast Office

1 /s/ Frank J. Anders
2 FRANK J. ANDERS
3 Trial Attorney
4 U.S. Department of Justice, Civil Division,
5 Torts Branch, West Coast Office
6 450 Golden Gate Avenue, Room 75395
7 P.O. Box 36028
8 San Francisco, California 941023463
9 Telephone: (415) 436-6648

10 Attorneys for United States of America
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VERIFICATION

FRANK J. ANDERS says:

I am one of the attorneys for plaintiff, United States of America, herein, and make this verification by authority for and on its behalf; I have read the foregoing Complaint, know the contents thereof, and from information officially furnished to me believe the same to be true.

I verify under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct.

Dated: August 24, 2018.

s/ Frank J. Anders
FRANK J. ANDERS

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
United States of America**DEFENDANTS**

Clay Jonak, Roger Ison, Jonak-Ison Partnership, Unknown Defendants 1-10

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant **Columbia**

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)

R. Michael Underhill, Frank J. Anders, U.S. Dept. of Justice, Civil Division, Torts Branch, West Coast Office, 450 Golden Gate Avenue, P.O. Box 36028, San Francisco, CA 94102, (415) 436-6630

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

33 U.S.C. 2701 et seq.; 42 U.S.C. § 9601 et seq.

Brief description of cause:

Recovery of removal costs and damages under Oil Pollution Act of 1990 and CERCLA.

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. in excess of 1,162,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

08/24/2018

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff(s)

v.

Defendant(s)

)
)
)
)
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)
)
)

Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____ , a person of suitable age and discretion who resides there,
 on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

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 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____ , a person of suitable age and discretion who resides there,
 on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: